

STATE OF MICHIGAN
COURT OF APPEALS

MARK CHURELLA, SUSAN RADTKE, and
PETER TREBOLDI,

Plaintiffs-Appellants,

v

PIONEER STATE MUTUAL INSURANCE
COMPANY, DAN CZMER, JACK D'ARCY,
HARLAN GINGRICH, ROBERT WEST,
CARLETON WILSON, DALE LITTLE,
GORDON GINGRICH, and MILTON
TIMMERMAN,

Defendants-Appellees,

and

ATTORNEY GENERAL, COMMISSIONER OF
THE OFFICE OF FINANCIAL AND
INSURANCE SERVICES, and NATIONAL
ASSOCIATION OF MUTUAL INSURANCE
COMPANIES,

Intervening Defendants-Appellees,

and

MGNISH DENNEHY AGENCY, INC. and LORI
SMITH,

Defendants.

FOR PUBLICATION
August 28, 2003
9:00 a.m.

No. 238695
Wayne Circuit Court
LC No. 96-635359-CZ

Updated Copy
October 24, 2003

Before: Donofrio, P.J., and Bandstra and O'Connell, JJ.

BANDSTRA, J. (*concurring*).

I concur with the majority that we should affirm in this case. However, the decision that the policyholders have no right to compel distribution of a surplus makes it unnecessary to

consider whether the directors violated the business judgment rule in failing to make that distribution. I would not reach that second question and note that, by doing so, the majority opinion might be misread as indicating that policyholders such as those involved here would have a right to compel a distribution if they could allege and prove that the business judgment rule was violated. I do not read the majority opinion to have that import and write separately to point that out.

Further, I note that our decision that the policyholders have no right to compel a distribution should not be viewed as unduly harsh. They are not without a remedy. If a majority of policyholders thinks that a distribution should be made, they can elect new board members who share that view.

/s/ Richard A. Bandstra